

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROY DANIEL MORAGA,

Case No. 3:22-cv-00013-RCJ-CSD

Petitioner,

v.

ORDER

WARDEN PERRY RUSSELL, *et al.*,

Respondents.

Petitioner Roy Daniel Moraga, a Nevada state prisoner, has filed a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254 (ECF No. 1-1) and an Application for Leave to Proceed *In Forma Pauperis* (ECF No. 1). This habeas matter is before the Court for initial review under the Rules Governing Section 2254 Cases. Petitioner challenges a 1990 judgment of conviction entered in Eighth Judicial District Court Case No. 89C092174, pursuant to which he is still in custody.¹ The Court takes judicial notice of the habeas petitions Petitioner has filed in the District of Nevada, including one that was decided on the merits: Case No. 3:99-cv-00507-DWH-RAM, which was ultimately decided on the merits in Case No. 3:03-cv-00220-LRH-RAM; Case No. 3:14-cv-00230-LRH-VPC; Case No. 3:16-cv-532-RCJ-WGC; Case No. 3:18-cv-330-LRH-WGC; and Case No. 3:21-cv-00056-LRH-CLB.

As this Court has previously explained to Petitioner, a second or successive petition may not be filed absent authorization from the Court of Appeals. Under 28 U.S.C. § 2244(b)(3), before a second or successive petition is filed in the federal district court, a petitioner must move in the court of appeals for an order authorizing the district court to consider the petition. A federal district

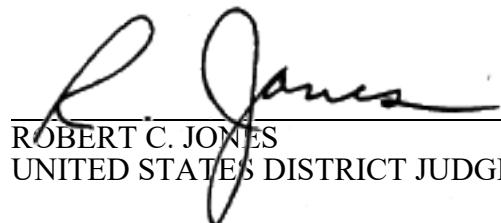
¹ The Court takes judicial notice of the online docket records of the Eighth Judicial District Court and Nevada appellate courts. The docket records may be accessed by the public online at: <https://www.clarkcountycourts.us/Anonymous/default.aspx> and <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>. According to state court records, of which this Court takes judicial notice, an amended judgment of conviction has been entered in Petitioner's criminal case in 1993.

1 court does not have jurisdiction to entertain a successive petition absent such permission. *Brown*
2 *v. Muniz*, 889 F.3d 661, 667 (9th Cir. 2018). Petitioner makes no allegation or showing that he
3 has received authorization from the Court of Appeals for the Ninth Circuit to file this second or
4 successive petition. This second or successive petition must therefore be dismissed for lack of
5 jurisdiction.

6 **IT IS THEREFORE ORDERED:**

- 7 1. Petitioner's Application for Leave to Proceed *In Forma Pauperis* (ECF No. 1) is denied
8 as moot.
- 9 2. This action is dismissed without prejudice for lack of jurisdiction.
- 10 3. Petitioner is denied a certificate of appealability, as jurists of reason would not find the
11 dismissal of the petition on jurisdictional grounds to be debatable or wrong.
- 12 4. The Clerk of Court is instructed to add Nevada Attorney General Aaron D. Ford as
13 counsel for Respondents. No response is required from Respondents other than to
14 respond to any orders of a reviewing court.
- 15 5. Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the Clerk of Court will
16 file on the docket and serve the Petition (ECF No. 1-1) on the Nevada Attorney General
17 and this order by sending a notice of electronic filing to the Nevada Attorney General's
18 office.
- 19 6. The Clerk of Court is further directed to enter final judgment accordingly, dismissing
20 this action without prejudice, and close this case.

21 DATED this 2nd day of March 2022.

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24 ROBERT C. JONES
25 UNITED STATES DISTRICT JUDGE
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